

Claimant requests the Board to affirm the ALJ's findings that she suffered accidental injury arising out of and in the course of her employment and that she provided timely notice. But claimant argues the ALJ erred in failing to award her temporary total disability benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant testified that on June 12, 2003, in the course of her employment with respondent, she was working in the stockroom. Claimant lifted a box containing heavy metal parts off a shelf and placed it on the floor because it was too heavy to carry. She then dragged the box over to where she could restock it and then dragged it back and lifted the box back onto the shelf. As she lifted the box she immediately experienced symptoms in her lower abdomen. Claimant identified a co-employee who witnessed the incident.

Claimant went to the bathroom and discovered her bladder had prolapsed. She then went to her supervisor, Karen Longgood and told her that her bladder had fallen while she was working in the stockroom. The supervisor was on the phone and told claimant to go sit down and she would get with her later. Later that afternoon, when the supervisor did not get back with claimant, she again told the supervisor she needed to see a doctor and was told to go ahead and call her doctor. Claimant scheduled an appointment and went to her doctor that afternoon.

A written statement from claimant's supervisor, Karen S. Longgood, was offered, over claimant's objection¹, which indicated claimant had simply informed the supervisor that her "bladder had fallen and she needed to go to the doctor" but the supervisor noted claimant never mentioned it was a work-related injury.²

Claimant also stated she later told Dennis Hitt as well as Dick Haas, that she continued to suffer a great deal of pain from her injury suffered in the stockroom. Mr. Hitt, respondent's operations manager, testified and denied that claimant related her condition to a work-related injury.

Linda Gamache, respondent's human resources director, testified that the day before the accident claimant told her she was scheduled to have surgery on her bladder. She further testified that in subsequent conversations regarding her condition the claimant had never mentioned a work-related accident. Claimant vehemently denied she had surgery scheduled before she suffered the work-related accident on June 12, 2003, but she agreed she never referred to her condition as work-related during her discussions with Ms. Gamache because she assumed her supervisor had told Ms. Gamache about her accident.

¹ See K.A.R. 51-3-5a(a). "Medical reports or any other records or statements shall be considered by the administrative law judge at the preliminary hearing."

² P.H. Trans., Resp. Ex. J.

Two of respondent's representatives testified before the ALJ and the claimant's supervisor signed a statement disputing claimant's testimony that she had indicated she had suffered a work-related injury. Where there is conflicting testimony and also, as in this case, conflicting statements, credibility is an important issue. Here, the ALJ had the opportunity to personally observe the claimant and two of respondent's representatives testify in person. Granting claimant's request for medical treatment, the ALJ apparently believed the claimant's testimony over respondent's representatives' testimonies along with the written statement of claimant's supervisor. The Board concludes that some deference may be given to the ALJ's findings and conclusions because he was able to personally observe and judge the credibility of the claimant and two of respondent's representatives. Therefore, the Board concludes, for preliminary hearing purposes, that claimant provided timely notice of her June 12, 2003, work-related accident.

Claimant testified she suffered injury lifting a heavy box at work. Respondent later sent claimant to Employer Health Services where she was referred to Dr. Todd Johnson. Dr. Johnson opined claimant's prolapse occurred as a result of the heavy lifting at work.³ Claimant has met her burden of proof she suffered accidental injury arising out of and in the course of her employment.

The Board is not unmindful of respondent's argument that claimant had a previous condition which was being treated. Claimant agreed she had a previous bladder operation but testified that she had no further problems until the work-related incident. No medical records were proffered to rebut her testimony.

Claimant argues that she is entitled to temporary total disability compensation. This is an appeal from a preliminary hearing order. The Board's jurisdiction to review preliminary hearing issues and findings is generally limited to the following:

- (1) Did the worker sustain an accidental injury?
- (2) Did the injury arise out of and in the course of employment?
- (3) Did the worker provide timely notice and timely written claim?
- (4) Is there any defense to the compensability of the claim?⁴

Additionally, the Board may review any preliminary hearing order where a judge exceeds his or her jurisdiction.⁵ Jurisdiction is generally defined as authority to make

³ P.H. Trans., Cl. Ex. 1.

⁴ K.S.A. 44-534a(a)(2) (Furse 2000).

⁵ K.S.A. 2002 Supp. 44-551(b)(2)(A).

inquiry and decision regarding a particular matter. The jurisdiction and authority of a court to enter upon inquiry and make a decision is not limited to deciding a case rightly but includes the power to decide it wrongly. The test of jurisdiction is not a correct decision but the right to enter upon inquiry and make a decision.⁶

An ALJ has the jurisdiction and authority to grant temporary total disability benefits at a preliminary hearing. Therefore, Judge Foerschler did not exceed his jurisdiction. The issue of whether claimant's medical condition and employment situation entitles claimant to receive temporary total disability benefits is not an issue that is reviewable from a preliminary hearing order. At this juncture of the proceeding, the Board does not have the authority to reweigh the evidence and determine if claimant is temporarily and totally disabled.

As provided by the Act, preliminary hearing findings are not final but subject to modification either upon presenting additional evidence at another preliminary hearing or upon a full hearing on the claim.⁷

WHEREFORE, it is the finding, of the Board that the Order of Administrative Law Judge Robert H. Foerschler dated September 2, 2003, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of November 2003.

BOARD MEMBER

c: Michael W. Downing, Attorney for Claimant
Robert J. Wonnell, Attorney for Respondent and its Insurance Carrier
Robert H. Foerschler, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁶ See *Taber v. Taber*, 213 Kan. 453, 516 P.2d 987 (1973).

⁷ See K.S.A. 44-534a(a)(2) (Furse 2000).